

H.799

Introduced by Representatives Botzow of Pownal and Marcotte of Coventry

Referred to Committee on

Date:

Subject: Labor; employers' liability and workers' compensation

Statement of purpose of bill as introduced: This bill proposes to clarify that an employer or insurance carrier that is liable to provide compensation for a worker's injury shall also pay the worker's wages for work time that is missed to attend treatment or medical appointments; to clarify provisions related to vocational rehabilitation assessments; and to provide for the electronic filing of evidence related to an injury.

An act relating to workers' compensation

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. § 640 is amended to read:

§ 640. MEDICAL BENEFITS; ASSISTIVE DEVICES; HOME AND
AUTOMOBILE MODIFICATIONS

* * *

(c) ~~An employer shall not withhold any wages from an employee for the employee's absence~~ If an employee is absent from work for treatment of a work injury or to attend a medical examination related to a work injury the

1 insurance carrier liable to provide compensation for the employee's injury or,
2 if the employer is self-insured, the employer liable to provide compensation for
3 the employee's injury shall pay the employee his or her current wages for the
4 time missed from work to attend the appointment. If the employee selects a
5 new health care provider in accordance with subsection (b) of this section, the
6 employer shall have the right to require other medical examinations as
7 provided in this chapter.

8 * * *

9 Sec. 2. 21 V.S.A. § 641 is amended to read:

10 § 641. VOCATIONAL REHABILITATION

11 (a) When, as a result of an injury covered by this chapter, an employee is
12 unable to perform work for which the employee has previous training or
13 experience, the employee shall be entitled to vocational rehabilitation services,
14 including retraining and job placement, as may be reasonably necessary to
15 restore the employee to suitable employment. Vocational rehabilitation
16 services shall be provided as follows:

17 * * *

18 (3) The Commissioner shall adopt rules to ensure that a worker who
19 requests services or who has been out of work for more than ~~90~~ 60 days ~~is~~
20 ~~timely and cost-effectively screened for benefits under this section~~ receives an
21 entitlement assessment. The rules shall provide that:

1 (A) ~~Provide that all vocational rehabilitation work, except for initial~~
2 ~~screenings, be performed by a Vermont-certified vocational rehabilitation~~
3 ~~counselor including counselors currently certified pursuant to the rules of the~~
4 ~~Department. Initial screenings shall be performed by an individual with~~
5 ~~sufficient knowledge or experience to perform adequately the vocational~~
6 ~~rehabilitation screening functions.~~ If an injured worker receives temporary
7 total disability benefits for a period of 60 consecutive days, the employer shall,
8 within 15 days of the 60th day, submit a memorandum to the Department and
9 shall refer the injured worker to a Vermont-certified vocational rehabilitation
10 counselor for a preliminary entitlement assessment.

11 (B) ~~Provide for an initial screening to determine whether a full~~
12 ~~assessment is appropriate. An injured worker who is determined to be eligible~~
13 ~~for a full assessment shall be timely assessed and offered appropriate~~
14 ~~vocational rehabilitation services.~~ Within 15 days of referral, the certified
15 vocational rehabilitation counselor shall complete a preliminary entitlement
16 assessment based on communications with the injured worker, the treating
17 physician, and the employer. If the preliminary assessment determines that,
18 more likely than not, the injured worker is unable to perform work for which
19 he or she has previous training or experience without vocational services, then
20 the vocational rehabilitation counselor shall perform a full entitlement
21 assessment within 30 days, unless additional time is granted by the

1 Commissioner. The vocational rehabilitation counselor shall document all
2 communications with the injured worker, the treating physician, and the
3 employer, and any evidence relied on in making his or her preliminary or full
4 assessment.

5 (C) ~~Provide a mechanism for a periodic and timely screening of~~
6 ~~injured workers who are initially found not to be ready or eligible for a full~~
7 ~~assessment to determine whether a full assessment has become appropriate. If~~
8 the preliminary assessment does not sufficiently establish the injured worker's
9 ability to perform work to enable the certified vocational rehabilitation
10 counselor to determine whether the worker is entitled to vocational
11 rehabilitation services, the counselor shall reevaluate the injured worker every
12 30 days, or at a longer interval if the Commissioner determines that the
13 circumstances justify it, until a preliminary determination can be made.

14 (D)(i) ~~Protect against potential conflicts of interest in the assignment~~
15 ~~and performance of initial screenings. An employer that fails to either submit~~
16 the memorandum or make a referral for a preliminary entitlement assessment
17 as required pursuant to subdivision (A) of this subdivision (3) shall be subject
18 to an administrative penalty of \$100.00 per occurrence.

19 (ii) If an employer fails to make a referral within the time required
20 pursuant to subdivision (A) of this subdivision (3), then the injured worker

1 may choose, or the Commissioner may assign, a certified vocational
2 rehabilitation counselor to perform the preliminary assessment.

3 (iii) The cost of any assessments shall be paid by the employer in
4 accordance with rules adopted by the Commissioner.

5 (E) All vocational rehabilitation work shall be performed by a
6 Vermont-certified vocation rehabilitation counselor, including counselors
7 currently certified pursuant to the Department's rules.

8 (F) ~~Ensure the~~ The injured worker ~~has a choice of a~~ may select the
9 certified vocational rehabilitation counselor.

10 * * *

11 Sec. 3. 21 V.S.A. § 660a is amended to read:

12 § 660a. ELECTRONIC FILING OF REPORTS OF INJURY

13 * * *

14 (f) An insurance carrier and its representatives or agents, and, to the extent
15 practicable, an injured worker and his or her representative shall file all
16 evidence electronically in a format specified by the Commissioner.

17 Sec. 4. EFFECTIVE DATE

18 This act shall take effect on July 1, 2016.